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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,119	04/11/2001	Carlo Verburg	8553/210	2286

7590

04/15/2003

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EXAMINER

PRICE, RICHARD THOMAS JR

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,119

Applicant(s)

VERBURG ET AL.

Examiner

Thomas Price

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 75-84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 75-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 75-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 75, line 1, the Applicant claims an "automated apparatus", yet nowhere in the body of the claim, nor any of the independent claims does the Applicant claim any elements which highlight or positively claim the "automated" feature.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 65-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over van der Lely '911. Van der Lely teaches a construction including an accommodation for animals reduces a liquid to a fine spray by the rubbing of the cow with brushes 44 due to the air/water mixing by rotation of the brushes resulting in a liquid atomization device. The device of Van der Lely is positioned in a milking compartment with a robot. The means for determining whether the animal is undergoing thermal stress is the operator operating the equipment. Regarding claim 72, the use of cameras in milking parlors is well-known and thus deemed to be obvious to a person of ordinary skill in the

art at the time the invention was made, because it allows the operator to monitor numerous cows at the same time. Regarding claim 73, the use of a hydrometer is well-known in milking parlors for monitoring the water vapor in the building. Lastly, the operator is considered an odor monitor.

Response to Arguments

With regard to Applicants' argument that the claimed apparatus is automated is duly considered, however, the Applicants' present no claim language in the claims to give life and breath to the term automated. The claims present no elements structurally connected to other positively claimed elements that as a whole, claim an automated system. Further, the Applicants readily know, that no matter how automated a milking system is, there is at least one operator present to oversee the dairy system. So to say that the claimed invention teaches away from "hands-on manual" is an overstatement at minimum, and technically, incorrect, at best. Have the Applicants presented claims that positively read on an automated apparatus? NO. Does the specification support such a statement? Applicants nowhere in their specification discuss that the "automated" feature is new, novel and unobvious. This automated feature is completely unsubstantiated in the specification. The automated feature is being presented to the Examiner as a patentable distinct feature, but is merely a secondary consideration. Further, the Applicants' state that a dairyman cannot act as an odor monitor, is ridiculous. Dairymen for ages, have acted as various types of monitors for their cows. So if the cow was dead and rotting, the operator of the dairy parlor would not notice or smell this. The Applicants claim an "odor monitor", which giving the odor monitor its

broadest interpretation, clearly reads on or could read on the dairyman's nose. The Applicants discuss how when a cow decides it is time to be milked, it enters the milking compartment, the sensors sense this, and the sensors sense that. When the cow is finished it can voluntarily leave the milking compartment, is wonderfully stated. However, the prior art is replete with discussions on how animals are milked. Furthermore, this has nothing to do with the particulars of what is claimed. This is a classic example of the arguments being more specific than the actual claim language. The Applicants argue that the reference to van der Lely does not teach or discuss cooling the animal. First point, the Applicants claim an apparatus, and only functionally claim "for cooling animals". Which means, the cited reference does not have to teach or even discuss the cooling of the animal, but merely be able to do it. Second point, anytime you apply water to animal, it has an inherent cooling effect. Unless of course, it is boiling water. Luckily, van der Lely does not teach applying boiling water to the animal. Additionally, the spraying means 26 includes a discharge opening that is considered to broadly read on a "nozzle" that atomizes the liquid or water by creating a fine spray. Also, the use of cameras in dairy parlors is wide spread, which allows the operators to monitor the cows for various reasons, security, stress or health issues, etc.. Lastly, the rollers act, especially when rotating, as an air flowing means. And the on off switch is considered the air flow controlling means. Question: Do the Applicants realize that independent claim 75 reads on the well-known method and or device of watering an animal down by "hose while a breeze is blowing across the animal"?

Applicant's arguments filed 2-28-2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 703-308-2694. The examiner can normally be reached on Mon, Tues, Thurs & Fri 6:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Application/Control Number: 09/832,119

Page 6

Art Unit: 3643

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Thomas Price
Primary Examiner GAU: 3643

rtp
April 10, 2003